

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

UNITED STATES OF AMERICA	CRIMINAL ACTION NOS.
	4:11-CR-119-Y
	4:11-CR-120-Y
	4:11-CR-139-Y
	4:11-CR-140-Y
	4:11-CR-146-Y
V.	
RICHARD LANCE BECK	
TERRY GLEN SILLERS	
JOSE MACARIO RICO-ZAPATERO	
SALVADOR SERNA-ROMERO	Fort Worth, Texas
IRIS YOLANDA SMITH	October 6, 2011
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TRANSCRIPT OF PROCEEDINGS

(Rearraignment Hearing)

BEFORE THE HONORABLE JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: MR. SHAWN SMITH
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For Defendants Beck,
Sillers and Smith:

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For Defendants Rico
and Serna:

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APPEARANCES: (Cont.)

Court Reporter:

MS. ANA P. WARREN

U.S. District Court Reporter

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Proceedings recorded by mechanical stenography; transcript
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P R O C E E D I N G S

(Commencing, 9:00 a.m.)

THE COURT: The Court has several matters set for rearraignment this morning. I'll begin with Cause Number 4:11-CR-119, United States versus Richard Lance Beck. As I call your name, the marshals will show you where to line up.

I'll note that Mr. Shawn Smith is present for the government in all cases; is that correct?

MR. SMITH: Yes, Your Honor.

THE COURT: And Mr. William Biggs is present for Mr. Fleury in his cases?

MR. BIGGS: Yes, Your Honor.

THE COURT: All right. Also, Cause Number 4:11-CR-120, United States versus Terry Glen Sillers. Cause Number 4:11-CR-139, United States versus Jose Macario Rico-Zapatero. Mr. Hermesmeier is present for the defendant. And, also, in Cause Number 4:11-CR-140, United States versus Salvador Serna-Romero. Cause Number 4:11-CR-146, United States versus Iris Yolanda Smith.

Let's have Ms. Smith stand over here since she has Mr. Biggs as well.

All right. I would ask that each of the defendants please raise your right hand and be sworn by my clerk.

(Defendants sworn by the clerk)

THE COURT: Very well. Let's begin by stating your

1 full name. I'll begin with Ms. Smith.

2 DEFENDANT SMITH: Iris Yolanda Smith.

3 THE COURT: I'm sorry. You're going to have to speak
4 up very loudly. My court reporter has to hear and record all
5 of your answers.

6 DEFENDANT SMITH: Iris Yolanda Smith.

7 THE COURT: All right. Ms. Smith, and if you could,
8 go ahead and scoot in a little closer.

9 And, Mr. Beck, I'm going to ask you to scoot in a little
10 closer as well.

11 All right. Would you state your full name, Mr. Beck?

12 DEFENDANT BECK: Richard Lance Beck.

13 THE COURT: Mr. Sillers?

14 DEFENDANT SILLERS: Terry Glen Sillers.

15 THE COURT: Mr. Rico-Zapatero?

16 DEFENDANT RICO: Jose Macario Rico-Zapatero.

17 THE COURT: And do you go by the last name Rico?

18 DEFENDANT RICO: Yes, sir.

19 THE COURT: And Mr. Serna-Romero?

20 DEFENDANT SERNA: Salvador Serna-Romero.

21 THE COURT: And do you go by the last name Serna?

22 DEFENDANT SERNA: Yes, sir.

23 THE COURT: Is your name spelled correctly in the
24 indictment or information that has been filed against you?

25 Ms. Smith?

1 DEFENDANT SMITH: Yes.

2 THE COURT: Mr. Beck?

3 DEFENDANT BECK: Yes.

4 THE COURT: Mr. Sillers?

5 DEFENDANT SILLERS: Yes, sir.

6 THE COURT: Mr. Rico?

7 DEFENDANT RICO: Yes, sir.

8 THE COURT: Mr. Serna?

9 DEFENDANT SERNA: Yes, sir.

10 THE COURT: Do each of you understand that you are
11 now under oath and that if you answer any of the Court's
12 questions falsely, your answers may later be used against you
13 in a prosecution for perjury or for making a false statement?
14 Ms. Smith?

15 DEFENDANT SMITH: Yes.

16 THE COURT: Mr. Beck?

17 DEFENDANT BECK: Yes, sir.

18 THE COURT: Mr. Sillers?

19 DEFENDANT SILLERS: Yes, sir.

20 THE COURT: Mr. Rico?

21 DEFENDANT RICO: Yes, sir.

22 THE COURT: Mr. Serna?

23 DEFENDANT SERNA: Yes, sir.

24 THE COURT: Do each of you read, write, and
25 understand the English language?

1 Ms. Smith?

2 DEFENDANT SMITH: Yes.

3 THE COURT: Mr. Beck?

4 DEFENDANT BECK: Yes, sir.

5 THE COURT: Mr. Sillers?

6 DEFENDANT SILLERS: Yes, sir.

7 THE COURT: Mr. Rico?

8 DEFENDANT RICO: No.

9 THE COURT: Mr. Serna?

10 DEFENDANT SERNA: No.

11 THE COURT: All right. As to Defendants Rico and
12 Serna, I will note for the record that Ms. Monica Munera has
13 previously been sworn as the interpreter and is providing that
14 service. Are you able to understand the proceedings through
15 the interpreter?

16 Mr. Rico?

17 DEFENDANT RICO: Yes, sir.

18 THE COURT: And Mr. Serna?

19 DEFENDANT SERNA: Yes, sir.

20 THE COURT: Very well. Do each of you understand
21 that I am conducting this sentence rather than the district
22 judge based upon your consent? However, it is the district
23 judge who will retain all final decision-making authority over
24 the plea, and it is the district judge who will conduct your
25 sentencing?

1 Ms. Smith?

2 DEFENDANT SMITH: Yes.

3 THE COURT: Mr. Beck?

4 DEFENDANT BECK: Yes, sir.

5 THE COURT: Mr. Sillers?

6 DEFENDANT SILLERS: Yes, sir.

7 THE COURT: Mr. Rico?

8 DEFENDANT RICO: Yes, sir.

9 THE COURT: Mr. Serna?

10 DEFENDANT SERNA: Yes, sir.

11 THE COURT: And I've been provided a document in each
12 of your cases entitled "Consent to Administration of Guilty
13 Plea and Federal Rule of Criminal Procedure 11 Allocution" by
14 a United States Magistrate Judge. Is this your signature that
15 appears on this consent form?

16 Ms. Smith?

17 DEFENDANT SMITH: Yes.

18 THE COURT: Mr. Beck?

19 DEFENDANT BECK: Yes, sir.

20 THE COURT: Mr. Sillers?

21 DEFENDANT SILLERS: Yes, sir.

22 THE COURT: Mr. Rico?

23 DEFENDANT RICO: Yes, sir.

24 THE COURT: And Mr. Serna?

25 DEFENDANT SERNA: Yes, sir.

1 THE COURT: All right. I do find that each of you
2 have knowingly and voluntarily waived your right to enter your
3 guilty plea before the district judge and that you have
4 consented to proceed before me in that plea this morning. And
5 I'm signing an order to that effect in each of your cases.

6 Now, is there anyone present who has a physical disability
7 or impairment, which might make it difficult for you to stand
8 for approximately the next 25 to 30 minutes? Is there anyone?

9 All right. Before I go any further, in Mr. Rico and
10 Mr. Serna's cases, the consent form is not signed by the
11 United States Attorney. Mr. Smith, I'm going to hand these
12 forward and ask that you execute those on behalf of your
13 office.

14 (Brief pause in proceedings)

15 THE COURT: Thank you.

16 All right. Let me give the defendants some general
17 instructions. You and each of you may, if you choose, plead
18 not guilty to any charge against you or persist in that plea
19 if it's already been made. And if you plead not guilty, the
20 Constitution of the United States guarantees you the following
21 rights:

22 You have the right to a speedy and public trial by a jury
23 in this district. You have the right at such a trial for you
24 to confront, that is, to see, hear, and cross examine all
25 witnesses against you.

1 You have the right to use the power and the process of the
2 Court to compel the production of any evidence, including the
3 attendance of any witnesses on your behalf. You have the
4 right to have the assistance of an attorney at all stages of
5 the proceedings, and if you could not afford an attorney, the
6 Court will appoint an attorney for you.

7 At such a trial, you could not be compelled to testify,
8 and whether you would testify would be a decision in which
9 your judgment alone would control. At such a trial, the
10 United States would be required to prove your guilt beyond a
11 reasonable doubt, and if you were convicted, you would have
12 the right to appeal your conviction.

13 Do each of you understand that you have and are guaranteed
14 each of these constitutional rights?

15 Ms. Smith?

16 DEFENDANT SMITH: Yes.

17 THE COURT: Mr. Beck?

18 DEFENDANT BECK: Yes, sir.

19 THE COURT: And Mr. Sillers?

20 DEFENDANT SILLERS: Yes, sir.

21 THE COURT: And Mr. Rico?

22 DEFENDANT RICO: Yes, sir.

23 THE COURT: And Mr. Serna?

24 DEFENDANT SERNA: Yes, sir.

25 THE COURT: On the other hand, if you plead guilty

1 and if that guilty plea is accepted by the Court, there will
2 not be a further trial of any kind, so that by pleading
3 guilty, you would waive your right to a trial as well as those
4 rights associated with a trial as I've just described them.

5 Do you understand, Ms. Smith?

6 DEFENDANT SMITH: Yes.

7 THE COURT: Mr. Beck?

8 DEFENDANT BECK: Yes, sir.

9 THE COURT: Mr. Sillers?

10 DEFENDANT SILLERS: Yes, sir.

11 THE COURT: Mr. Rico?

12 DEFENDANT RICO: Yes, sir.

13 THE COURT: And Mr. Serna?

14 DEFENDANT SERNA: Yes, sir.

15 THE COURT: Generally, a defendant who is accused of
16 a crime cannot plead guilty unless he or she is actually
17 guilty of that crime. In federal court, it is the judge who
18 determines the penalty if a defendant is convicted whether
19 that conviction is on a verdict of a jury or upon a plea of
20 guilty --

21 THE INTERPRETER: Your Honor, could you repeat,
22 please?

23 THE COURT: Yes. In federal court, it is the judge
24 who determines the penalty if a defendant is convicted whether
25 that conviction is on a verdict of a jury or upon a plea of

1 guilt.

2 The Court has not and will not talk to anyone about the
3 facts of your case except here in your presence where you,
4 your attorney, and representatives of the government are all
5 present. However, if a guilty verdict is entered, a
6 presentence report will be prepared, and the Court will review
7 that report with the probation officers outside of your
8 presence.

9 If you plead guilty, you will be convicted. However, you
10 and your attorney each will be given an opportunity to present
11 to the Court any pleas for leniency. The penalty will be
12 decided based upon the facts heard in court.

13 You should never depend or rely upon any statement or
14 promise by anyone whether connected with law enforcement or
15 the government or anyone else as to what penalty will be
16 assessed against you.

17 Should you decide to plead guilty, your plea of guilty
18 must not be induced or prompted by any promises, pressure,
19 threats, force, or coercion of any kind. A plea of guilty
20 must be purely voluntary, and you should plead guilty only
21 because you are guilty and for no other reason.

22 Do each of you understand each of my explanations about
23 the process and the consequences of pleading guilty?

24 Ms. Smith?

25 DEFENDANT SMITH: Yes.

1 THE COURT: Mr. Beck?

2 DEFENDANT BECK: Yes, sir.

3 THE COURT: Mr. Sillers?

4 DEFENDANT SILLERS: Yes, sir.

5 THE COURT: Mr. Rico?

6 DEFENDANT RICO: Yes, sir.

7 THE COURT: Mr. Serna?

8 DEFENDANT SERNA: Yes, sir.

9 THE COURT: Now, under the Sentencing Reform Act of
10 1984 as construed by our Supreme Court, the United States
11 Sentencing Commission has issued advisory guidelines for
12 judges to consider in determining the sentence in a criminal
13 case.

14 Have you and your attorney discussed the charges against
15 you, the matter of sentencing, and how the sentencing
16 guidelines might apply in your case?

17 Ms. Smith?

18 DEFENDANT SMITH: Yes.

19 THE COURT: Mr. Beck?

20 DEFENDANT BECK: Yes, sir.

21 THE COURT: Mr. Sillers?

22 DEFENDANT SILLERS: Yes, sir.

23 THE COURT: Mr. Rico?

24 DEFENDANT RICO: Yes, sir.

25 THE COURT: Mr. Serna?

1 DEFENDANT SERNA: Yes, sir.

2 THE COURT: Even so, I must inform you that in
3 determining a sentence, it is the Court's obligation to
4 calculate the applicable sentencing guidelines, to consider
5 that range along with any possible departures under the
6 sentencing guidelines, and other sentencing factors under 18,
7 USC, Section 3553(a).

8 The Court is not bound by facts that are stipulated
9 between you and your attorney on the one hand and the
10 government on the other. The Court can impose punishment that
11 might disregard stipulated facts or take into account facts
12 not mentioned in the stipulations. In that event, you might
13 not even be permitted to withdraw your plea of guilty.

14 The Court will not be able to determine the guideline
15 range for your sentence until after the presentence report has
16 been completed and you and the government have each had an
17 opportunity to challenge the facts and the conclusions that
18 are set forth in the report.

19 After the Court has determined the guideline range that is
20 appropriate under the facts of your case, the Court has the
21 authority to impose a sentence that is above, below, or within
22 that range, as long as the sentence imposed is reasonable and
23 based upon the facts and the law.

24 You have the right to appeal the sentence the Court
25 imposes unless you waive that right. Under some

1 circumstances, the government also has the right to appeal.

2 Finally, within the federal system, parole has been
3 abolished, so that if you are sentenced to imprisonment, you
4 will not be released on parole.

5 Do each of you understand each of my explanations about
6 the -- well, regarding sentencing?

7 Ms. Smith?

8 DEFENDANT SMITH: Yes.

9 THE COURT: Mr. Beck?

10 DEFENDANT BECK: Yes, sir.

11 THE COURT: Mr. Sillers?

12 DEFENDANT SILLERS: Yes, Your Honor.

13 THE COURT: Mr. Rico?

14 DEFENDANT RICO: Yes, sir.

15 THE COURT: Mr. Serna?

16 DEFENDANT SERNA: Yes, sir.

17 THE COURT: How old are you?

18 Ms. Smith?

19 DEFENDANT SMITH: Forty-one.

20 THE COURT: Mr. Beck?

21 DEFENDANT BECK: Thirty-two.

22 THE COURT: Mr. Sillers?

23 DEFENDANT SILLERS: Forty-six.

24 THE COURT: Did you say 46?

25 DEFENDANT SILLERS: Forty-six.

1 THE COURT: Mr. Rico?

2 DEFENDANT RICO: Twenty-nine.

3 THE COURT: Mr. Serna?

4 DEFENDANT SERNA: Forty-one.

5 THE COURT: And what is your date of birth?

6 Ms. Smith?

7 DEFENDANT SMITH: January 10, 1970.

8 THE COURT: Mr. Beck?

9 DEFENDANT BECK: September 22, 1979.

10 THE COURT: Mr. Sillers?

11 DEFENDANT SILLERS: December 14, 1974.

12 THE COURT: Mr. Rico?

13 DEFENDANT RICO: August 17, 1982.

14 THE COURT: Mr. Serna?

15 DEFENDANT SERNA: 12-18-69.

16 THE COURT: How far did you go in school?

17 Ms. Smith?

18 DEFENDANT SMITH: GED.

19 THE COURT: Mr. Beck?

20 DEFENDANT BECK: GED.

21 THE COURT: Mr. Sillers?

22 DEFENDANT SILLERS: GED, sir.

23 THE COURT: Mr. Rico?

24 DEFENDANT RICO: 9th.

25 THE COURT: Mr. Serna?

1 DEFENDANT SERNA: 5th.

2 THE COURT: Are you currently or within the last six
3 months, have you been under the care of a physician or a
4 psychiatrist?

5 Ms. Smith?

6 DEFENDANT SMITH: Yes.

7 THE COURT: All right. Is there anything about that
8 care or treatment that interferes with your ability to
9 understand what we're doing here today?

10 DEFENDANT SMITH: No.

11 THE COURT: Mr. Beck?

12 DEFENDANT BECK: No, sir.

13 THE COURT: Mr. Sillers?

14 DEFENDANT SILLERS: No, sir.

15 THE COURT: Mr. Rico?

16 DEFENDANT RICO: No, sir.

17 THE COURT: Mr. Serna?

18 DEFENDANT SERNA: No, sir.

19 THE COURT: Have you been hospitalized or treated for
20 narcotics addiction or alcoholism?

21 Ms. Smith?

22 DEFENDANT SMITH: No.

23 THE COURT: Mr. Beck?

24 DEFENDANT BECK: No.

25 THE COURT: Mr. Sillers?

1 DEFENDANT SILLERS: No, sir.

2 THE COURT: Mr. Rico?

3 DEFENDANT RICO: No, sir.

4 THE COURT: Mr. Serna?

5 DEFENDANT SERNA: No, sir.

6 THE COURT: Are you currently under the influence of
7 alcohol or any narcotic drug?

8 Ms. Smith?

9 DEFENDANT SMITH: No.

10 THE COURT: Mr. Beck?

11 DEFENDANT BECK: No, sir.

12 THE COURT: Mr. Sillers?

13 DEFENDANT SILLERS: No, sir.

14 THE COURT: Mr. Rico?

15 DEFENDANT RICO: No, sir.

16 THE COURT: Mr. Serna?

17 DEFENDANT SERNA: No, sir.

18 THE COURT: Do you suffer from any emotional or
19 mental disability?

20 Ms. Smith?

21 DEFENDANT SMITH: No.

22 THE COURT: Mr. Beck?

23 DEFENDANT BECK: No, sir.

24 THE COURT: Mr. Sillers?

25 DEFENDANT SILLERS: No, sir.

1 THE COURT: Mr. Rico?

2 DEFENDANT RICO: No, sir.

3 THE COURT: Mr. Serna?

4 DEFENDANT SERNA: No, sir.

5 THE COURT: Are you of sound mind and do you full any
6 understand what it is we're doing here today?

7 Ms. Smith?

8 DEFENDANT SMITH: Yes.

9 THE COURT: Mr. Beck?

10 DEFENDANT BECK: Yes, sir.

11 THE COURT: Mr. Sillers?

12 DEFENDANT SILLERS: Yes, sir.

13 THE COURT: Mr. Rico?

14 DEFENDANT RICO: Yes, sir.

15 THE COURT: Mr. Serna?

16 DEFENDANT SERNA: Yes, sir.

17 THE COURT: Mr. Biggs, do you have any reason to
18 believe that Ms. Smith, Mr. Beck, or Mr. Sillers are not fully
19 competent to enter a plea of guilty?

20 MR. BIGGS: No, Your Honor. I believe they are fully
21 competent.

22 THE COURT: Do you believe that the plea of guilty
23 that each of them is proposing to make will be a knowing and
24 voluntary plea?

25 MR. BIGGS: Yes, Your Honor.

1 THE COURT: Mr. Hermesmeier, do you have any reason
2 to believe that your clients are not fully competent to enter
3 a plea of guilty?

4 MR. HERMESMEYER: No, Your Honor.

5 THE COURT: Do you believe that the plea of guilty
6 that each of them are proposing to make will be a knowing and
7 voluntary plea?

8 MR. HERMESMEYER: Yes, Your Honor.

9 THE COURT: Now, in Ms. Smith's case, do we have a
10 waiver of indictment?

11 MR. SMITH: Yes, Your Honor. It was filed at the
12 arraignment, actually.

13 THE COURT: Did we go over it appropriately at that
14 time?

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: Did I instruct Ms. Smith as to her right
17 to be indicted by a grand jury, or did I just go over the form
18 itself?

19 MR. SMITH: I wasn't present at the hearing, Your
20 Honor. So I don't know.

21 THE COURT: Let me go ahead and cover it just to be
22 sure.

23 All right. Ms. Smith, you are -- you understand you are
24 charged with the commission of a felony?

25 DEFENDANT SMITH: Yes.

1 THE COURT: Now, under the United States
2 Constitution, you may not be charged with a felony unless a
3 grand jury finds by the return of an indictment that there is
4 probable cause to believe that a crime has been committed and
5 that you committed it. However, you may waive your right to
6 an indictment and consent to being charged by an information,
7 which is filed by the United States Attorney.

8 The felony charge in your case has been brought by the
9 filing of just such an information by the United States
10 Attorney. If you do not waive indictment and the government
11 wishes to pursue its case against you, the government must
12 present its case to the grand jury and request that you be
13 indicted.

14 Now, a grand jury is composed of at least 16 but not more
15 than 23 persons, and at least 12 grand jurors must find that
16 there is probable cause to believe that you committed the
17 crime with which you are charged before you may be indicted.
18 So the grand jury might or it might not indict you, but if you
19 waive indictment by the grand jury, the case will proceed
20 against you on the information filed by the United States
21 Attorney just as though you had been indicted.

22 Have you discussed with your attorney the matter of
23 waiving your right to indictment by the grand jury?

24 DEFENDANT SMITH: Yes.

25 THE COURT: And do you understand your right to be

1 indicted by a grand jury?

2 DEFENDANT SMITH: Yes.

3 THE COURT: Have any threats or promises been made to
4 induce you to waive indictment in your case?

5 DEFENDANT SMITH: No.

6 THE COURT: Do you wish to waive your right to
7 indictment by the grand jury?

8 DEFENDANT SMITH: Yes.

9 THE COURT: All right. And, Mr. Biggs, do you see
10 any reason why Ms. Smith should not waive indictment?

11 MR. BIGGS: No, Your Honor.

12 THE COURT: And is such waiver consistent with your
13 advice?

14 MR. BIGGS: Yes, it is.

15 THE COURT: And I understand there has been a written
16 waiver filed; is that correct?

17 MR. BIGGS: Yes.

18 THE COURT: And, Ms. Smith, was it your signature
19 that was placed on the written waiver?

20 DEFENDANT SMITH: Yes.

21 THE COURT: Very well. The Court finds that
22 Ms. Smith's waiver of indictment is a knowing and voluntary
23 waiver, and it is accepted by the Court.

24 (Brief pause in proceedings)

25 THE COURT: Very well. I will order that the waiver

1 be filed with the other papers in your case, Ms. Smith.

2 All right. Have you received a copy of the indictment, or
3 in your case, Ms. Smith, the information in your case?

4 Ms. Smith?

5 DEFENDANT SMITH: Yes.

6 THE COURT: Mr. Beck?

7 DEFENDANT BECK: Yes, sir.

8 THE COURT: Mr. Sillers?

9 DEFENDANT SILLERS: Yes, sir.

10 THE COURT: Mr. Rico?

11 DEFENDANT RICO: Yes, sir.

12 THE COURT: Mr. Serna?

13 DEFENDANT SERNA: Yes, sir.

14 THE COURT: Have you read the indictment or
15 information or had it read to you?

16 Ms. Smith?

17 DEFENDANT SMITH: Excuse me?

18 THE COURT: Have you read the information in your
19 case?

20 DEFENDANT SMITH: Yes.

21 THE COURT: Have you read the indictment in your
22 case, Mr. Beck?

23 DEFENDANT BECK: Yes, sir.

24 THE COURT: Mr. Sillers?

25 DEFENDANT SILLERS: Yes, sir.

1 THE COURT: Mr. Rico?

2 DEFENDANT RICO: Yes, sir.

3 THE COURT: And Mr. Serna?

4 DEFENDANT SERNA: Yes, sir.

5 THE COURT: And do you understand the nature of the
6 charges against you, Ms. Smith?

7 DEFENDANT SMITH: I didn't hear you?

8 THE COURT: Do you understand the nature of the
9 charges against you?

10 DEFENDANT SMITH: Yes.

11 THE COURT: Mr. Beck?

12 DEFENDANT BECK: Yes, sir.

13 THE COURT: Mr. Sillers?

14 DEFENDANT SILLERS: Yes, sir.

15 THE COURT: Mr. Rico?

16 DEFENDANT RICO: Yes, sir.

17 THE COURT: Mr. Serna?

18 DEFENDANT SERNA: Yes, sir.

19 THE COURT: Even so, it would be appropriate for the
20 United States Attorney to read the charges here in open court.
21 However, I will allow you to waive that reading if you so
22 choose. Do you wish to have those charges read, or do you
23 waive the reading?

24 Ms. Smith?

25 DEFENDANT SMITH: I'll waive the reading.

1 THE COURT: Mr. Beck?

2 DEFENDANT BECK: Waive, sir.

3 THE COURT: Mr. Sillers?

4 DEFENDANT SILLERS: Waive, sir.

5 THE COURT: Mr. Rico?

6 DEFENDANT RICO: I waive.

7 THE COURT: Mr. Serna?

8 DEFENDANT SERNA: I waive.

9 THE COURT: I will allow each of you to waive the
10 reading of the charges. You also have the right to have
11 explained to you the essential elements of the charges against
12 you. And, therefore, I will call upon Mr. Shawn Smith with
13 the United States Attorney's Office to set forth the essential
14 elements in each of your cases.

15 Mr. Smith?

16 MR. SMITH: For Ms. Smith, first, that the defendant
17 knowingly presented to an agency of the United States a false
18 or fraudulent claim against the United States.

19 Second, the defendant knew that the claim was false and
20 fraudulent.

21 And, third, that the false and fraudulent claim was
22 material.

23 THE COURT: All right. Ms. Smith, do you admit that
24 you committed all of the essential elements of the offense
25 just described?

1 DEFENDANT SMITH: Yes.

2 THE COURT: All right. As to Defendant Beck?

3 MR. SMITH: For Defendants Beck and Sillers, the same
4 elements.

5 First, that the defendant was in federal custody.

6 Second, that the defendant was at an institution or
7 facility where the defendant was confined by direction of the
8 Attorney General for conviction of an offense.

9 Third, that the defendant departed without permission.

10 And, fourth, that the defendant knew he did not have
11 permission to leave federal custody.

12 THE COURT: Defendants Beck and Sillers, do each of
13 you admit that you committed all of the essential elements of
14 the offense just described?

15 Mr. Beck?

16 DEFENDANT BECK: Yes, sir.

17 THE COURT: Mr. Sillers?

18 DEFENDANT SILLERS: Yes, sir.

19 THE COURT: As to Defendants Rico and Serna?

20 MR. SMITH: First, that on or about the date alleged
21 in the indictment, the defendant was an alien.

22 Second, that the defendant was previously deported and
23 removed from the United States.

24 Third, that the defendant was found in the United
25 States.

1 And, fourth, the defendant had not received the express
2 consent of either the Attorney General of the United States or
3 the secretary of the Department of Homeland Security to
4 re-apply for admission to the United States since the time of
5 the defendant's previous deportation.

6 THE COURT: Do each of you admit that you committed
7 all of the essential elements of the offense just described?

8 Mr. Rico?

9 DEFENDANT RICO: Yes, sir.

10 THE COURT: Mr. Serna?

11 DEFENDANT SERNA: Yes, sir.

12 THE COURT: Now, each of you are appearing here with
13 your attorney, and you have indicated that you have discussed
14 your case and the charges made against you and the issue of
15 punishment and sentencing with your attorney and, also, how
16 the sentencing guidelines might apply to your case.

17 Are you fully satisfied with the representation and advice
18 that you have received from your attorney in your case?

19 Ms. Smith?

20 DEFENDANT SMITH: Yes.

21 THE COURT: Mr. Beck?

22 DEFENDANT BECK: Yes, sir.

23 THE COURT: Mr. Sillers?

24 DEFENDANT SILLERS: Yes, sir.

25 THE COURT: Mr. Rico?

1 DEFENDANT RICO: Yes, sir.

2 THE COURT: Mr. Serna?

3 DEFENDANT SERNA: Yes, sir.

4 THE COURT: Now, I understand there is a plea
5 agreement in Ms. Smith's case, and I've been provided
6 documents, which are appropriately styled and numbered for
7 your case, Ms. Smith, which are entitled "Plea Agreement with
8 Waiver of Appeal" and, also, a plea agreement supplement.

9 Is this your signature that appears on these plea
10 documents?

11 DEFENDANT SMITH: Yes.

12 THE COURT: And did you read or have read to you the
13 plea agreement and the plea agreement supplement?

14 DEFENDANT SMITH: Yes.

15 THE COURT: Did you understand everything that's set
16 forth in the plea agreement and the supplement?

17 DEFENDANT SMITH: Yes.

18 THE COURT: By placing your signature on these
19 documents, are you asking the Court to approve and accept your
20 plea agreement?

21 DEFENDANT SMITH: Yes.

22 THE COURT: Now, your plea agreement involves a
23 waiver of right to appeal. So I'm going to direct your
24 attention to Paragraph 10 of your plea agreement, and I ask
25 you, did you read and understand this waiver of appeal

1 paragraph?

2 DEFENDANT SMITH: Yes.

3 THE COURT: And did you discuss this paragraph with
4 your attorney?

5 DEFENDANT SMITH: Yes.

6 THE COURT: Do you knowingly and voluntarily waive
7 your right to appeal as set forth in this paragraph?

8 DEFENDANT SMITH: Yes.

9 THE COURT: And, Ms. Smith, are all the terms of your
10 agreement with the government set out in the written plea
11 agreement and the supplement?

12 DEFENDANT SMITH: Yes.

13 THE COURT: Did you knowingly and voluntarily and of
14 your own free will enter into this plea agreement?

15 DEFENDANT SMITH: Yes.

16 THE COURT: Other than the written plea agreement and
17 the supplement, has anyone made any promise or assurance to
18 you of any kind in an effort to induce you to enter a plea of
19 guilty in your case?

20 DEFENDANT SMITH: No.

21 THE COURT: Very well. Then I'll order the filing of
22 the plea agreement in your case.

23 As to the remaining defendants, has anyone made any
24 promise or assurance to you of any kind in an effort to induce
25 you to enter a plea of guilty in your case?

1 Mr. Beck?

2 DEFENDANT BECK: No, sir.

3 THE COURT: Mr. Sillers?

4 DEFENDANT SILLERS: No.

5 THE COURT: Mr. Rico?

6 DEFENDANT RICO: No, sir.

7 THE COURT: Mr. Serna?

8 DEFENDANT SERNA: No, sir.

9 THE COURT: As to all defendants, has anyone
10 mentally, physically, or in any other way attempted to force
11 you to plead guilty in your case?

12 Ms. Smith?

13 DEFENDANT SMITH: No.

14 THE COURT: Mr. Beck?

15 DEFENDANT BECK: No, sir.

16 THE COURT: Mr. Sillers?

17 DEFENDANT SILLERS: No, sir.

18 THE COURT: Mr. Rico?

19 DEFENDANT RICO: No, sir.

20 THE COURT: Mr. Serna?

21 DEFENDANT SERNA: No, sir.

22 THE COURT: And do each of you understand that if
23 your guilty plea is accepted, you will be adjudged guilty of
24 the offense charged against you and your punishment will be
25 assessed somewhere within the range of punishment provided by

1 statute?

2 Ms. Smith?

3 DEFENDANT SMITH: Yes.

4 THE COURT: Mr. Beck?

5 DEFENDANT BECK: Yes, sir.

6 THE COURT: Mr. Sillers?

7 DEFENDANT SILLERS: Yes, sir.

8 THE COURT: Mr. Rico?

9 DEFENDANT RICO: Yes, sir.

10 THE COURT: Mr. Serna?

11 DEFENDANT SERNA: Yes, sir.

12 THE COURT: Are you a citizen of the United States?

13 Ms. Smith?

14 DEFENDANT SMITH: Yes.

15 THE COURT: Mr. Beck?

16 DEFENDANT BECK: Yes, sir.

17 THE COURT: Mr. Sillers?

18 DEFENDANT SILLERS: Yes, sir.

19 THE COURT: Mr. Rico?

20 DEFENDANT RICO: No.

21 THE COURT: Mr. Serna?

22 DEFENDANT SERNA: No, sir.

23 THE COURT: As to Defendants Rico and Serna, your
24 conviction in this case could result in deportation. That is,
25 you could be required to leave the United States, and it could

1 adversely affect your ability to ever become a citizen of the
2 United States. Have you discussed with your attorney the
3 possibility that you may be deported if you are adjudged
4 guilty of the charges against you?

5 Mr. Rico?

6 DEFENDANT RICO: Yes, sir.

7 THE COURT: Mr. Serna?

8 DEFENDANT SERNA: Yes, sir.

9 THE COURT: As to the remaining defendants, the
10 offense to which you are pleading guilty is a felony, and
11 conviction of the felony may deprive of you of valuable rights
12 of citizenship, such as the right to vote, to hold public
13 office, to ever serve on a jury, to ever possess any kind of
14 firearm, and other valuable rights.

15 Do you understand that consequence, Ms. Smith?

16 DEFENDANT SMITH: Yes.

17 THE COURT: Mr. Beck?

18 DEFENDANT BECK: Yes, sir.

19 THE COURT: Mr. Sillers?

20 DEFENDANT SILLERS: Yes, sir.

21 THE COURT: In addition, I will now call upon the
22 United States Attorney to set forth any potential penalties
23 for and consequences of conviction for the charges to which
24 each of the defendants is proposing to plead guilty.

25 Mr. Smith?

1 MR. SMITH: For Ms. Smith, a \$250,000 fine, five
2 years imprisonment, plus, a term of supervised release of
3 three years. If the defendant violates any condition of
4 supervised release, the Court made revoke such term of
5 supervised release and require the defendant to serve an
6 additional period of confinement.

7 In addition, the Court, pursuant to 18, United States
8 Code, Section 3663(a), shall order the defendant to pay
9 restitution to any victim of his or her crime, which could
10 include community service.

11 The defendant specifically agrees, pursuant to 18, United
12 States Code, Section 3663(a)(3), that the extent of
13 restitution ordered by the Court is not limited to the
14 restitution attributed to the offense of conviction alone but
15 may include restitution arising from all relevant conduct.
16 And a mandatory special assessment of \$100.

17 THE COURT: Ms. Smith, do you understand that if you
18 plead guilty, you are subject to the penalties and
19 consequences just explained?

20 DEFENDANT SMITH: Yes.

21 THE COURT: As to Defendants Beck and Sillers?

22 MR. SMITH: Up to five years imprisonment and/or a
23 fine of up to \$250,000. In addition, the Court may assess a
24 term of supervised release of up to three years, and a special
25 assessment of \$100.

1 THE COURT: Do each of you understand that if you
2 plead guilty, you are subject to the penalties and
3 consequences just explained?

4 Mr. Beck?

5 DEFENDANT BECK: Yes, sir.

6 THE COURT: Mr. Sillers?

7 DEFENDANT SILLERS: Yes, sir.

8 THE COURT: Finally, as to Defendants Rico and Serna?

9 MR. SMITH: For Defendant Rico, imprisonment for a
10 period of not more than two years, a fine not to exceed
11 \$250,000, a term of supervised release not to exceed one year,
12 which may be mandatory under the law and will follow any term
13 of imprisonment. If the defendant violates the conditions of
14 supervised release, he could be imprisoned for an additional
15 term of imprisonment. Plus, a mandatory special assessment of
16 \$100.

17 For Defendant Serna, imprisonment for a period of not more
18 than 20 years, a fine not to exceed \$250,000, or both fine and
19 imprisonment. A term of supervised release not to exceed
20 three years, which may be mandatory under the lawyer and will
21 follow any term of imprisonment.

22 If the defendant violates the conditions of supervised
23 release, he could be imprisoned for an additional term of
24 imprisonment, and a special assessment of \$100.

25 THE COURT: Mr. Smith, as to Defendant Rico, what was

1 the term of imprisonment?

2 MR. SMITH: Not more than two years, Your Honor.

3 THE COURT: I wanted to make sure I heard that
4 correctly.

5 All right. Defendants Rico and Serna, do each of you
6 understand that if you plead guilty, you are subject to the
7 penalties and consequences just explained?

8 Mr. Rico?

9 DEFENDANT RICO: Yes, sir.

10 THE COURT: Mr. Serna?

11 DEFENDANT SERNA: Yes, sir.

12 THE COURT: Now, Ms. Smith, under the terms of your
13 plea agreement, you understand that if the sentence that you
14 receive is more severe than you expect, you will still be
15 bound by your plea of guilty, and you will no right to
16 withdraw your plea?

17 DEFENDANT SMITH: Yes, sir.

18 THE COURT: All right. Does any defendant have any
19 questions about anything that we have covered up to this
20 point?

21 Ms. Smith?

22 DEFENDANT SMITH: No.

23 THE COURT: Mr. Beck?

24 DEFENDANT BECK: No, sir.

25 THE COURT: Mr. Sillers?

1 DEFENDANT SILLERS: No, sir.

2 THE COURT: Mr. Rico?

3 DEFENDANT RICO: No, sir.

4 THE COURT: Mr. Serna?

5 DEFENDANT SERNA: No, sir.

6 THE COURT: Then having heard all the foregoing, I
7 now ask, how do plead to the one count information against
8 you, Ms. Smith, guilty or not guilty?

9 DEFENDANT SMITH: Guilty.

10 THE COURT: And how do you plead to the one count
11 indictment against you, guilty or not guilty?

12 Mr. Beck?

13 DEFENDANT SMITH: Guilty, sir.

14 THE COURT: Mr. Sillers?

15 DEFENDANT SILLERS: Guilty.

16 THE COURT: Mr. Rico?

17 DEFENDANT RICO: Guilty.

18 THE COURT: Mr. Serna?

19 DEFENDANT SERNA: Guilty.

20 THE COURT: Mr. Biggs, is the guilty plea of your
21 clients consistent with your advice?

22 MR. BIGGS: Yes, Your Honor.

23 THE COURT: And as to Mr. Fleury's clients as well?

24 MR. BIGGS: Yes.

25 THE COURT: And, Mr. Hermesmeier, are the guilty

1 pleas of your clients consistent with your advice?

2 MR. HERMESMEYER: Yes, Your Honor.

3 THE COURT: Then I will accept the guilty pleas of
4 the defendants on the condition that there is a factual basis
5 to support such plea. I have been provided documents
6 appropriately styled and numbered for each of the defendant's
7 cases, which are entitled "Factual Resume." Each of these
8 factual resumes appear to be signed by the defendant and
9 counsel.

10 I ask, is this your signature that appears on the factual
11 resume? Ms. Smith?

12 DEFENDANT SMITH: Yes.

13 THE COURT: Mr. Beck?

14 DEFENDANT BECK: Yes, sir.

15 THE COURT: Mr. Sillers?

16 DEFENDANT SILLERS: Yes, sir.

17 THE COURT: Mr. Rico?

18 DEFENDANT RICO: Yes, sir.

19 THE COURT: And Mr. Serna?

20 DEFENDANT SILLERS: Yes, sir.

21 THE COURT: Have you read or had read to you the
22 factual resume? Ms. Smith?

23 DEFENDANT SMITH: Yes.

24 THE COURT: Mr. Beck?

25 DEFENDANT BECK: Yes, sir.

1 THE COURT: Mr. Sillers?

2 DEFENDANT SILLERS: Yes, sir.

3 THE COURT: Mr. Rico?

4 DEFENDANT RICO: Yes, sir.

5 THE COURT: And Mr. Serna?

6 DEFENDANT SERNA: Yes, sir.

7 THE COURT: Did you understand everything that is set
8 forth in your factual resume?

9 Ms. Smith?

10 DEFENDANT SMITH: Yes.

11 THE COURT: Mr. Beck?

12 DEFENDANT BECK: Yes, sir.

13 THE COURT: Mr. Sillers?

14 DEFENDANT SILLERS: Yes, sir.

15 THE COURT: Mr. Rico?

16 DEFENDANT RICO: Yes, sir.

17 THE COURT: And Mr. Serna?

18 DEFENDANT SERNA: Yes, sir.

19 THE COURT: It would be appropriate for the United
20 States Attorney to now read the stipulated facts portion of
21 your factual resume here in open court. However, because you
22 have read it or had it read to you, you've indicated to me
23 that you fully understand it, and your signature appears on
24 the factual resume, I will allow you to waive the reading of
25 those facts.

1 Do you wish to have the facts read, or do you waive the
2 reading at this time?

3 Ms. Smith?

4 DEFENDANT SMITH: Waive.

5 THE COURT: Mr. Beck?

6 DEFENDANT BECK: Waive, sir.

7 THE COURT: Mr. Sillers?

8 DEFENDANT SILLERS: Waive, Your Honor.

9 THE COURT: Mr. Rico?

10 DEFENDANT RICO: Waive, sir.

11 THE COURT: And Mr. Serna?

12 DEFENDANT SERNA: I waive.

13 THE COURT: I will allow each of you to waive the
14 reading of the factual resume.

15 Are the facts stated in the factual resume true and
16 correct? Ms. Smith?

17 DEFENDANT SMITH: Yes.

18 THE COURT: Mr. Beck?

19 DEFENDANT BECK: Yes, sir.

20 THE COURT: Mr. Sillers?

21 DEFENDANT SILLERS: Yes, sir.

22 THE COURT: One moment.

23 On Mr. Beck's factual resume on Page 2, there is a
24 handwritten change in the facts changing the date. I need to
25 hand this forward and ask Mr. Beck and Mr. Biggs, if you

1 would, initial that change. There is a handwritten change
2 there.

3 (Brief pause in proceedings)

4 THE COURT: Thank you.

5 Mr. Beck, with that change, are the facts stated in your
6 factual resume true and correct?

7 DEFENDANT BECK: Yes, sir.

8 THE COURT: And I may have asked you but I'm not
9 sure, Mr. Sillers. Are the facts in your factual resume true
10 and correct?

11 DEFENDANT SILLERS: Yes, sir.

12 THE COURT: Also, in Defendant Rico's factual resume,
13 there is a handwritten change in the stipulated facts
14 portion.

15 And, Mr. Hermesmeier, is this your client's initials above
16 that change?

17 MR. HERMESMEYER: Yes, Your Honor.

18 THE COURT: So, Mr. Rico, are the facts stated in
19 your factual resume true and correct?

20 DEFENDANT RICO: Yes, sir.

21 THE COURT: And, Mr. Serna, are the facts stated in
22 your factual resume true and correct?

23 DEFENDANT SERNA: Yes, sir.

24 THE COURT: Mr. Biggs, are the facts stated in the
25 factual resumes of Defendants Smith, Beck, and Sillers

1 consistent with the true facts as you and Mr. Fleury
2 understand them?

3 MR. BIGGS: Yes, sir.

4 THE COURT: And, Mr. Hermesmeier, are the facts in
5 your clients' factual resume consistent with the true facts as
6 you understand them?

7 MR. HERMESMEYER: Yes, Your Honor.

8 THE COURT: All right. The Court, being satisfied
9 with the responses given during this hearing, finds that each
10 defendant is fully competent and capable of entering an
11 informed plea and that his or her plea of guilty to the
12 charges against them is a knowing and voluntary plea supported
13 by an independent basis in fact containing each of the
14 essential elements of the offense charged against the
15 defendant. I accept each of your pleas of guilty, and I
16 pronounce each of you guilty of the offense charged against
17 you in the indictment or information.

18 Now, a presentence report will be prepared by the
19 probation office to assist the Court in sentencing. You will
20 be asked to give information for that report, and your degree
21 of cooperation could be a factor in the severity of the
22 sentence that you receive.

23 Your attorney is ordered to be present at your interview
24 with recent familiarity with Sentencing Guideline Section
25 3E1.1, Application Note 1A. You and your counsel will be

1 provided a copy of the presentence report well in advance of
2 the date of sentencing, and you will have an opportunity to
3 make any comments on it or objections to it.

4 Now, because I have conducted this hearing rather than the
5 district judge, based on your consent and the district judge's
6 referral of this matter to you, I am making a written report
7 to the district judging telling him what you have said and
8 done here today and what I have found. I inform each of you
9 that if you have any objection to anything I have said or done
10 or to this report itself, then those objections must be filed
11 within 14 days of the date of this hearing.

12 The clerk has provided each of your counsel with a
13 presentence referral form. Ms. Smith, you and your counsel
14 are instructed to take the form immediately upon the
15 conclusion of this hearing to the 4th Floor probation office
16 in this building where you will be given further instructions
17 regarding the presentence investigation.

18 Counsel for those clients in custody are, likewise,
19 instructed to do the same.

20 Ms. Smith, you are scheduled to be sentenced on
21 January 17, 2012 at 10:30 a.m.

22 The remaining defendants -- actually, Defendants Beck and
23 Sillers, each of you are scheduled to be sentenced January 23,
24 2012 at 9:30 a.m.

25 And Defendants Rico and Serna, you are each scheduled to

1 be sentenced on January 18, 2012 at 10:30 a.m.

2 All of you are set to be sentenced before the Honorable
3 Terry R. Means in this courtroom on those dates and times.

4 Now, as to Defendant Smith, is there any reason we need to
5 reconsider the custodial status of Defendant Smith?

6 MR. SMITH: No, Your Honor.

7 THE COURT: Ms. Smith, you have been out on
8 conditions of bond, and I will, therefore, find by clear and
9 convincing evidence that you do not pose a danger to the
10 community or a risk of flight or nonappearance as I have
11 received a favorable report from pretrial services that you
12 are in compliance with your conditions. Therefore, you will
13 be allowed to continue on the same conditions of release that
14 you have been on pending further proceedings.

15 As to the remaining defendants, you are currently in the
16 custody of the United States Marshal, and it's appropriate
17 that you remain in that custody pending further proceedings in
18 your case.

19 All right. Are there any other matters to consider in
20 connection with any of the defendants?

21 MR. SMITH: No, Your Honor.

22 THE COURT: Anything from the defendant?

23 MR. HERMESMEYER: No, Your Honor.

24 THE COURT: All right. Then that will conclude this
25 proceeding. The defendants are remanded to the custody of the

1 marshal, except for Ms. Smith, and the attorneys are
2 excused.

3 (End of proceedings, 9:50 a.m.)
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20 CERTIFICATE

21 I certify that the foregoing is a correct transcript from
22 the record of proceedings in the above-entitled matter, and
23 that the transcript was prepared by me and under my
supervision.

24 s/ Ana P. Warren
Ana P. Warren, CSR #2302
U.S. District Court Reporter

March 16, 2012
Date

25 -oOo-